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Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinions Below

The opinion of the Supreme Court of North Carolina (R. 26-29) is reported at 267 N.C. 431, 148 S.E.2d 290 (1966). The judgment, including findings of fact and conclusions of law, of the Superior Court of Durham County (R. 19-23) is unreported.

Jurisdiction

The judgment of the Supreme Court of North Carolina was entered May 25, 1966 (R. 30). On August 12, 1966, the time for filing a petition for writ of certiorari was extended by Mr. Justice Brennan to and including October 21, 1966 (R. 31). The petition filed October 21, 1966, was granted December 5, 1966 (R. 32). Jurisdiction of this Court rests on 28 U.S.C. § 1257(3), petitioner having

asserted below and here the deprivation of rights secured by the Constitution and statutes of the United States.

Question Presented

Petitioner and her children have been tenants in a low-income housing project constructed with federal and state funds and administered by the Housing Authority of the City of Durham, an agency of the State of North Carolina, pursuant to federal and state laws and regulations. The day after petitioner was elected president of a tenants' organization in the project, the Housing Authority gave notice that it was cancelling her lease. Petitioner requested that the Housing Authority tell her the reasons for her eviction and give her a hearing. The Housing Authority refused to give her a reason or a hearing but initiated this summary ejectment action in a state court and obtained an order that petitioner be removed from the premises.

Under these circumstances, was petitioner denied rights granted by the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States?

Constitutional and Statutory Provisions Involved

This case involves the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

This case also involves the United States Housing Act, as amended, 42 U.S.C. § 1401 *et seq.* The following portions of the Housing Act are set forth in the Appendix, *infra*, pp. 1a to 9a:

42 U.S.C. § 1401
42 U.S.C. § 1402
42 U.S.C. § 1404a

42 U.S.C. § 1410(g)
42 U.S.C. § 1415(7)

This case also involves the North Carolina "Housing Authorities Law", Gen. Stats. of North Carolina, § 157-1 *et seq.* The following portions of the "Housing Authorities Law" are set forth in the Appendix, *infra*, pp. 10a to 22a:

N.C.G.S. § 157-2
N.C.G.S. § 157-4
N.C.G.S. § 157-9
N.C.G.S. § 157-23
N.C.G.S. § 157-29

The case also involves North Carolina statutes relating to summary ejectment proceedings, Gen. Stats. of North Carolina, § 42-26 *et seq.* The following sections are set forth in the Appendix, *infra*, pp. 23a to 27a:

N.C.G.S. § 42-26
N.C.G.S. § 42-28
N.C.G.S. § 42-29
N.C.G.S. § 42-30
N.C.G.S. § 42-31
N.C.G.S. § 42-32
N.C.G.S. § 42-34

Statement

On November 11, 1964, petitioner and her children became tenants in McDougald Terrace, a low-rent public housing project owned and operated by the Housing Authority of the City of Durham, North Carolina. The lease agreement under which petitioner has occupied the project had an initial term from November 11 to November 30, 1964 (R. 11). The lease further provided that it would

thereafter be automatically renewed for successive terms of one month at a rental of $29 per month, provided there was no change in her income or family composition or violation of the terms of the lease (R. 12).

The Housing Authority of the City of Durham was established under North Carolina law and is "a public body and a body corporate and politic, exercising public powers," Gen. Stat. of N.C. § 157-9. The Authority has "all the powers necessary or convenient to carry out and effectuate the purposes and provisions" of the North Carolina Housing Authority law (§§ 157-1 et seq., Gen. Stat. of N.C.), including the powers "to manage as agent of any city or municipality . . . any housing project constructed or owned by such city" and "to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project," Gen. Stat. of N.C. § 157-9. The Housing Authority operates McDougald Terrace as a low rent housing project "under its statutory authority and pursuant to its contract with the Federal government" (R. 5).

On August 10, 1965, petitioner was elected president of the Parents' Club, a group composed of tenants of the McDougald Terrace project (R. 6). The following day, August 11, 1965, the Housing Authority, through its executive director, delivered a notice that petitioner's lease would be cancelled effective August 31, 1965, at which time she would have to vacate the premises (R. 5-6); petitioner received this notice on August 12, 1965 (R. 6). In the notification the Authority gave no reasons for its action but merely mentioned a provision of the lease that it claimed permitted the landlord to cancel upon fifteen days notice (R. 18).[1] After she received the notice, peti-

[1] The text of the notice, dated August 11, 1965, is as follows:

Your Dwelling Lease provides that the lease may be cancelled upon fifteen (15) days written notice. This is to notify you that your

tioner, through her attorneys, by phone and by letter requested a hearing to determine the reasons for her eviction; the request was denied (R. 9). It was stipulated that "although the Housing Authority had a meeting on the subject the defendant was not given a hearing in which she herself was present and reasons assigned to her" (R. 6). Her attorney met with the Housing Authority and its executive director on September 1, 1965, and the attorney again asked for a hearing but the request was denied (R. 9). Petitioner averred, on information and belief, that on September 1, 1965, the Housing Authority held a meeting with a police officer who supplied information allegedly obtained in an investigation of petitioner (R. 9). However, neither petitioner nor her attorney were present at this meeting, and she was not confronted with her accuser, informed of the information supplied to the Housing Authority, or given any opportunity to rebut any charges made against her (R. 9).

In evicting petitioner without giving a reason or a hearing, the Housing Authority relied on a sentence in the lease which provides that: "The Management may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last day of the term" (R. 12). The lease, prepared by the Housing Authority, also contained a variety of other provisions for termination. One provision states that the lease "shall be automatically terminated at the option of the management" with an immediate right of reentry and all notices required by law waived, if the tenant misrepresents a material fact in his application or if "the tenant fails to comply with any of the provisions of this lease" (R. 16).

Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy (R. 18).

Among the enumerated provisions of the lease which a tenant must comply with, and which might support termination of the lease in the event of non-compliance, are agreements by the tenant, *inter alia,* to pay rent when due; to pay for damages to the premises; to pay a penalty for excess consumption of electricity, gas or water; not to assign the lease or sublet or accommodate boarders or lodgers or use the premises other than as a dwelling for the tenant and his family; to keep the premises in "a clean and sanitary condition"; to "maintain the yard in a neat and orderly manner"; to "assist in the maintenance of the project"; "not to use the premises for any illegal or immoral purposes"; not to keep dogs or pets; not to make repairs or alterations without consent; "to follow all rules or regulations prescribed by the Management concerning the use and care of the premises"; to permit management to enter for repairs, etc.; to submit an annual income statement to Management; and to notify Management "of any increase or decrease in family income or of any change in family composition or assets" (R. 13-14). Another section of the lease allows the Management to terminate on 30 days notice at the end of any calendar month if the tenant's income "exceeds the limits established for eligible occupancy" (R. 15). Still another section provides that the tenant will "promptly" vacate the premises if he falsely warrants that neither he nor any person who is to occupy the premises is a member of an organization listed as subversive by the Attorney General of the United States, or if he becomes a member of such an organization.

Despite the notice of cancellation of her lease, when she was given no reason and no hearing petitioner refused to vacate the premises. On September 17, the Housing Authority instituted a summary ejectment action against petitioner in the Justice of the Peace Court in Durham. See Gen. Stats. of N.C. § 42-26 *et seq., infra,* pp. 23a-27a.

On September 20, the Justice of the Peace ordered that petitioner be removed from the premises (R. 4-5). Petitioner appealed to the Superior Court of Durham County (R. 4), where evidence was submitted in the form of a stipulation and petitioner's affidavit.

In the Superior Court petitioner filed a motion to quash the eviction proceedings and alleged therein that she had a right to her apartment and that a deprivation of that right without a hearing violated due process of law. Further, it was alleged that the defendant's eviction resulted primarily from her activities as a organizer of tenants (R. 10-11). These allegations were supported by petitioner's affidavit (R. 7-10). In the stipulation entered into between petitioner and the Housing Authority (R. 7-10), it was stipulated, *inter alia,* that the Housing Authority did not give petitioner a reason for its termination of the lease nor did it give her a hearing despite her request for one; that on August 10, 1965, defendant was elected president of the Parents Club and that the eviction notice was sent out on August 11, and that the executive director of the Housing Authority would testify, as he had testified before the justice of the peace, that

> ... whatever reason there may have been, if any, for giving notice to Joyce C. Thorpe of the termination of her lease, it was not for the reason that she was elected president of any group organized in McDougald Terrace . . . and not for any of the other reasons set forth in the affidavit . . . (R. 7).

Finally, it was stipulated and agreed that the judge could determine the case by finding facts based on the stipulation and affidavits, *Ibid.*

On the basis of the stipulation, the Superior Court made the finding:

> That the plaintiff Housing Authority of the City of Durham . . . gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected president of a group organized in McDougald Terrace on August 19, 1965; that these were not the reasons said notice was given and eviction undertaken (R. 21).

The Court went on to find that the Housing Authority gave no reason to petitioner for terminating the lease and did not conduct any hearing at which the defendant was present or invited to be present to inquire into the reasons for terminating the lease and, further, that although the defendant requested a hearing, she had no hearing other than that "before the Justice of the Peace in this eviction action and in this Court" (R. 22). The Court then concluded as a matter of law that the Housing Authority of the City of Durham had no duty to hold a hearing on the subject of petitioner's eviction or to communicate or give to the defendant any reason for the termination. Thus, the Court affirmed the judgment of the eviction (R. 23).

Subsequently, petitioner appealed to the Supreme Court of North Carolina, raising as error the above findings of fact and conclusions of law (R. 25). On May 25, 1966, in a per curiam decision, the Supreme Court affirmed the order to evict. It held, in effect, that the Authority was under no obligation to conduct a hearing or advise the tenant of its reasons for terminating the lease, apparently since its obligations to its tenants were the same as the obligations of a private landlord. Thus, the Court said:

> It is immaterial what may have been the reasons for the lessor's unwillingness to continue the relationship

of landlord and tenant after the expiration of the term as provided in the lease (R. 26-28).

The petitioner and her children have remained in possession of their apartment under a stay granted by the Supreme Court of North Carolina, pending decision in this Court.

Summary of Argument

Petitioner was denied due process by the cancellation of her low-income public housing benefit without notice of the reason for eviction or any administrative hearing to contest the cancellation. Her claim arose on an assertion that her First Amendment rights were violated by the Housing Authority of the City of Durham, an agency of the state and federal governments subject to constitutional restraints. The courts below upheld the claim of the Authority that it could act arbitrarily, without a reason, relying on principles applicable to private landlords.

I.

Governmental agencies acting as landlords are nevertheless subject to Due Process restraints against arbitrary action. Nothing in either the federal or state statutes under which the Durham Authority was established confers an arbitrary power to evict. Indeed, arbitrary evictions subvert the purposes of the federal-state program to protect low income citizens from the effects of inadequate slum housing.

Overriding constitutional concerns defeat any claim of arbitrary power to evict public housing tenants. The governmental agencies plainly cannot evict for a variety of reasons under the Constitution, including racial or religious discrimination, suppression of free speech, or (as petitioner

charged) interference with the right of free association. Government may not condition the availability of public benefits so as to restrict First Amendment rights. *Sherbert* v. *Verner*, 374 U.S. 398; *Speiser* v. *Randall*, 357 U.S. 513. The general principle against arbitrary action by government officials applies with equal force to government housing project managers who claim broad authority over the lives of those living in the projects. *Tucker* v. *Texas*, 326 U.S. 517.

II.

Petitioner was entitled, at the bare minimum, to notice of the reason for the cancellation of her governmental benefit of low income housing. Notice of the ground for governmental action is basic to the concept of Due Process. *Morgan* v. *United States*, 304 U.S. 1; *Willner* v. *Committee on Character & Fitness*, 373 U.S. 96. The authority has no substantial interest in secrecy. Disclosure would promote responsible action by the agency and insure that there is a reason for its action. Secrecy merely shields arbitrariness. The petitioner's interest in low-income housing is precious. When denied decent housing she is remitted to the misery of the slums, a penalty which may be "an almost insufferable burden," *Berman* v. *Parker*, 348 U.S. 26, 32.

The housing agency may not make surrender of the right to notice a condition of tenancy because of the doctrine forbidding imposition of unconstitutional conditions as the price of governmental benefits. *Sherbert* v. *Verner*, 374 U.S. 398; *Speiser* v. *Randall*, 357 U.S. 513; cf. *Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. 583. In any event, the lease was not a clear and explicit waiver of the right to notice of a reason for cancellation. Indeed, the lease should be construed to require the housing management to give a reason for eviction. The lease may be construed by

this Court under federal principles of law. *Clearfield Trust Co.* v. *United States,* 318 U.S. 363.

III.

Petitioner was entitled to an administrative hearing. An opportunity to offer proof when factual issues determine vital interests is basic to due process in administrative proceedings. The rule that a hearing is a fundamental requirement to preserve Due Process—freedom from arbitrary, capricious or discriminatory official action—has been developed in a variety of contexts. *Japanese Immigrant Case (Yamataya* v. *Fisher),* 189 U.S. 86; *Londoner* v. *Denver,* 210 U.S. 373; *Southern R. Co.* v. *Virginia,* 290 U.S. 190; *I.C.C.* v. *Louisville & N. R. Co.,* 227 U.S. 88; *Morgan* v. *United States,* 304 U.S. 1; *Slochower* v. *Board of Higher Education,* 350 U.S. 551; *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150 (5th Cir. 1961); *Willner* v. *Committee on Character & Fitness,* 373 U.S. 96.

By each of the tests stated by Mr. Justice Frankfurter in *Joint Anti-Fascist Refugee Comm.* v. *McGrath,* 341 U.S. 123, 163 (concurring opinion), petitioner is entitled to a hearing. Her injury is potentially grave; she has been treated arbitrarily. The Durham Housing Authority has statutory powers to conduct a hearing, including issuing subpoenas, administering oaths, and other incidents of fair procedure. Petitioner's First Amendment claim should be decided only after rigorous procedural safeguards. Such safeguards are needed to insure against arbitrariness.

Rejection of the right to a hearing on the basis of the lease provision was improper. The lease contained no express waiver of a hearing. For the government agency to require waiver of a hearing to obtain low-income housing is to impose an unconstitutional condition. *Sherbert* v. *Verner,* 374 U.S. 398; *Speiser* v. *Randall,* 357 U.S. 513.

ARGUMENT

Petitioner Was Denied Due Process of Law by Her Eviction From a State and Federally Supported Low-Income Housing Project in the Absence of Any Procedures to Give Her Any Notice of the Reason for the Eviction or Any Hearing to Contest the Basis for the Governmental Action.

Introduction

This case involves whether a municipal housing authority, acting as the agent of both the state and federal governments, violates the due process clauses of the Fifth and Fourteenth Amendments,[2] when it terminates housing benefits it is charged by law to furnish to a citizen, without affording the citizen either a statement of the reason for cancellation, or a hearing to contest its action. The case arises in the context of an assertion that petitioner was evicted to punish her exercise of First Amendment rights to freedom of association.

Although it is incontestable that the Housing Authority of the City of Durham is a governmental agency subject to the restraints of the Constitution, the Supreme Court of North Carolina decided that no procedural protection was required. Without mentioning the governmental char-

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[2] The Due Process Clause of the Fourteenth Amendment applies to the Housing Authority of the City of Durham, because it is a state agency, established and operated in accordance with state law (R. 5; Gen. Stats. of N.C. § 157-9). The Due Process Clause of the Fifth Amendment is also applicable because the Authority acts as an "agent for the federal government" (Gen. Stats. of N.C. § 157-9) in the operation and management of the housing project pursuant to a contract with the Federal Government (R. 5). By law the Authority is a "public body and a body corporate and politic, exercising public powers" (Gen. Stats. of N.C. § 157-9) (*infra*, Appendix, p. 14a).

acter of the agency, the Court applied to it the same legal principles that it would apply to a private non-governmental landlord. The State Court thus sanctioned and enforced the Authority's action cancelling petitioner's benefits under the public housing laws at its mere will or whim. It reasoned that petitioner had no rights to the housing except those conferred by her lease; that under the lease the Housing Authority had the right to terminate; and that it "is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease" (R. 28).

On this record it cannot be assumed that the Authority acted on any reasonable ground. Rather, it was testing its right to be arbitrary, capricious and unreasonable, and the Court thus sanctioned wholly arbitrary governmental action. This, we submit, is the net effect of the proceedings below, which included: (1) petitioner's affidavit that she was evicted the day after she was elected President of a tenant organization and that she believed the reason was an official's opposition to her effort to organize tenants (R. 8); (2) the official's stipulated testimony that his reason "if any" was not the reason alleged by plaintiff (R. 7); (3) the trial court's decision that the authority had no "duty to communicate or give . . . any reason" (R. 23); (4) confirmed by the appellate decision that the reason "is immaterial" (R. 28). Plainly, the case was viewed by the parties and the courts below as a test of the right of the Authority to evict arbitrarily and without any reason, any statement of a reason, or any hearing on the reason or lack of a reason.

Petitioner urges in detail below that the result reached in the state courts is inconsistent with the requirements of Due Process. We urge, first, that the Constitution pre-

cludes arbitrary, discriminatory or capricious action to withhold from an individual the benefits of the state-federal public housing program for the poor. Second, we submit that a minimum necessary protection against arbitrary action is that the Housing Authority be required to reveal the reason for its action. Third, we assert that due process requires that tenants in low-income governmentally operated projects be given some opportunity to be heard in order to offer such proof as may be appropriate to contest the asserted factual basis for the government's eviction orders.

I.

Public Housing Agencies May Not Evict Tenants Arbitrarily.

We urge that the Court reject the Durham Housing Authority's claim of an absolute and arbitrary power to deny the benefits of its program for low-income families at its mere will or whim. Such a claim comes late, far too late, in our constitutional history.[3] As a unanimous Court said in 1886: "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and view the history of their development, we are constrained to conclude they do not mean to leave room for the play and action of purely personal and arbitrary power." *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369. The essence of Due Process is "the protection of the individual against arbitrary action." *Ohio Bell Telephone Co.* v. *Public Utilities Com.,* 301 U.S. 292, 302 (Mr. Justice Cardozo); *Slochower* v. *Board of Higher Education,* 350 U.S. 551, 559. This was stated with clarity in its application to a government housing authority in *Rud-*

[3] Cf. *Sherbert* v. *Verner,* 374 U.S. 398, 404-405, and cases cited.

der v. *United States,* 226 F.2d 51, 53 (D.C. Cir. 1955), where Judge Edgerton wrote:

> The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process.

Similar reasoning has been followed—and we think rightly so—by state courts in New Jersey, California, Wisconsin and Illinois, holding that public housing authorities are subject to the Due Process Clause. *Kutcher* v. *Housing Authority of Newark,* 20 N.J. 181, 119 A.2d 1 (1955); *Housing Authority of Los Angeles* v. *Cordova,* 130 Cal. App.2d 883, 279 P.2d 215 (App. Dept. Super. Ct. 1955); *Lawson* v. *Housing Authority of City of Milwaukee,* 270 Wisc. 269, 70 N.W. 2d 605 (1955), cert. denied, 350 U.S. 882 (1955); *Chicago Housing Authority* v. *Blackman,* 4 Ill. 2d 319, 122 N.E. 2d 522 (1954). Cf. *Williams* v. *City of Ypsilanti,* Civil Action No. 28936, D.Mich., 1966 (Temporary injunction barring eviction of woman who had an illegitimate child); *Holt* v. *Richmond Redevelopment and Housing Authority,* Civil Action No. 4746, E.D. Va., Sept. 7, 1966. The Housing Authority's claim to arbitrary power must be found wanting for a host of reasons.

There is nothing in either the federal[4] or state acts[5] creating the publicly supported low-income housing program administered by the Durham Authority which expressly confers an arbitrary power to evict, or otherwise withhold the benefits of the program. Neither of the two provisions of the federal law which authorize the local

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[4] The United States Housing Act of 1937, as amended, 42 U.S.C. §1401 *et seq.*, p. 1a, Appendix, *infra.*

[5] The North Carolina "Housing Authorities Law," Gen. Stats. of North Carolina, § 157-1 *et seq.*, p. 10a, Appendix, *infra.*

agencies to require tenants to move from low-income projects (42 U.S.C. §1410(g)(3) and 42 U.S.C. §1404a) grants arbitrary power; both provisions are related to a policy of limiting occupancy to low-income families. The only provision of the state "Housing Authorities Law" about tenant selection also refers only to the income limitation (Gen. Stats. N.C. §157-29). The text of 42 U.S.C. §1410 (g)(3) (Appendix, infra, p. 7a), makes plain that it relates only to enforcement of maximum income limitations in low-income projects.[6] The other provision, 42 U.S.C. §1404a, serves this same purpose, although the purpose becomes completely apparent only from review of the legislative history. Section 1404a, provides, *inter alia:*

> Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, *the Public Housing Administration, or any State or local public agency administering a low-rent housing project* assisted pursuant to this chapter or sections 1501-1505 of this title, *shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility* with respect to low-rent housing projects assisted pursuant to this chapter and sections 1501-1505 of this title, *the Public Housing Administration is authorized,* where it finds such action equitable and in the public interest, *to exclude amounts or portions*

[6] The provision, added in 1961, 75 Stat. 164 (Act of June 30, 1961, Section 205) states that federal contribution contracts must provide that local agencies make periodic reexaminations of tenant's incomes and require tenants above the maximum income limits to move from the project, except in special circumstances.

thereof paid by the United States Government for disability or death occurring in connection with military service. (Emphasis supplied.)

The history of the provision, and its statutory predecessor amply demonstrates that §1404a was enacted to allow eviction of tenants above the income limits for low-income projects; nothing in the legislative history supports a claimed power to evict without cause.[7] There is no in-

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[7] The quoted provisions of section 1404a were enacted in the Housing Act of 1948, Title V, §502(b), 62 Stat. 1284. This was a reenactment, with slight changes of wording, of a provision adopted a year earlier in the Housing and Rent Act of 1947, Title II, §209(b), 61 Stat. 201.

Senator Ellender, who introduced the Section as an amendment made clear that the purpose was to permit evictions to enforce the income limitations:

> "MR. BUCK. As I understand the amendment, it would permit the Housing Authority to remove from public housing units tenants who are now earning an income greater than that which would enable them to qualify for occupancy of low-cost public housing units?"
>
> "MR. ELLENDER. That is correct. . . . There are many tenants in some of the public housing projects at the moment who can pay an economical rent. . . . [T]he purpose of the amendment is to make it possible for the authorities in charge of public housing to be able to evict those who are not entitled to be there." 93 *Cong. Rec.* 6044 (1947).

One month after the 1947 version was enacted, Congress passed a law allowing local agencies to postpone the commencement of eviction proceedings until March 1, 1948, if undue hardship would result for the occupants. Act of July 31, 1947, C.418, §2, 61 Stat. 705, (formerly 42 U.S.C. §1413a).

As indicated the 1948 version was basically a reenactment of the provision inserted in 1947. The 1948 version was proposed by a Senate subcommittee; the chairman made clear that it was a "provision for the eviction of over-income tenants." 94 Cong. Rec. 9867 (1948) (remarks of Senator McCarthy):

> . . . [W]e also have a provision for the eviction of over-income tenants in the present 190,000 public housing units. We do not provide that they must be evicted instanter. We provide that the F.P.H.A., the local housing agency, shall evict them in an orderly manner, and I understand they have a program of evicting 5 per cent each month on 6 month's notice.

dication that Congress made a judgment to grant arbitrary power.

Furthermore, the claim of arbitrary power is inconsistent with the expressed purposes of the state-federal low-income housing program. The policy of the United States is:

> . . . to promote the general welfare of the Nation by employing its fund and credit, . . . to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. 42 U.S.C. §1401.

The North Carolina enactment contained an even more detailed declaration of the necessity of the program for low-income housing to correct conditions which it found "cannot be remedied by the ordinary operation of private enterprise." Gen. Stats. N.C. § 157-2 (reprinted Appendix, *infra*, p. 10a).[8] Indeed, there must be specific findings as to the need for low income housing in order for a municipality to establish a housing authority under the North Carolina law (Gen. Stats. of N.C. § 157-4), or for such an authority to obtain federal funds (42 U.S.C. § 1415(7)). The state and federal statutory schemes make it plain that the public housing agencies are not acting as private landlords, furnishing housing as business proprietors. The program is rather an exercise of the general governmental power to protect the health, safety, and welfare of an

[8] See also the similar declarations in Gen. Stats. of N.C. §§ 157-40, 157-48.

economically disadvantaged segment of the citizenry.[9] The initiation of the program rested on explicit recognition of the fact that without public housing large number of persons would be condemned to live in urban and rural slums, suffering all the injuries stemming from unsafe and unsanitary dwellings.[10]

A power to evict tenants of public housing capriciously or without a reason is not merely inconsistent with the purposes of the program; it actually undermines and subverts them. Such arbitrary power necessarily places public housing tenants in "a state of insecurity," as the commentators have observed.[11] Thus, the intended benefits—family stability and security in a decent and safe environment—are negated. This naturally reduces the attractiveness of public housing for slum residents, even though housing is their primary problem.[12] More directly, of

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[9] As stated in *Powell* v. *Eastern Carolina Regional Housing Auth.*, 251 N.C. 812, 112 S.E.2d 386, 387, "The Legislature authorized the creation of housing authorities as a means of protecting low-income citizens from unsafe or unsanitary conditions in urban or rural areas, G.S. § 157-2."

[10] Gen. Stats. of N.C. § 157-2, found, *inter alia*, "the existence of housing conditions which endanger life or property by fire and other causes", and that "these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens. . . ."

[11] Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L. J. 1245, 1250. As observed by Alvin Schorr of the U. S. Dept. of Health, Education, and Welfare, some tenants find housing regulations and penalties "to be precisely a confirmation of their greatest anxiety, that they were being offered decent housing in exchange for their independence." Schorr, SLUMS AND SOCIAL INSECURITY (Dept. of H.E.W. Research Report No. 1), p. 112 (U.S. Govt. Printing Office, Washington, D. C. 1963).

[12] Studies indicate the distaste of slum residents for the rules, regulations and control over their lives which accompany public housing, and the marked lack of desire of many eligible slum residents to move to public housing. Sternlieb, THE TENEMENT LANDLORD, Rutgers Univ. Press (1965), pp. 14-15; Millspaugh, *Problems and Opportunities of Relocation*, 26 LAW & CONTEMP. PROB. 6, 11-12 (1961).

course, every actual exercise of an arbitrary power to evict a public housing tenant, remits the tenant and his family to the slums, subjecting them to all the injuries stemming from residence in unsafe and unsanitary dwellings, which the program is supposed to prevent.

Of course, putting aside the provisions and purposes of the housing acts, there are overriding constitutional concerns which make it plain that the claimed right to act for any reason, or for no reason, must fail. There plainly are *some reasons* which could not constitutionally support housing authority action. For example, it has been widely held that a public housing authority violates the Fourteenth Amendment by a policy of *refusing to lease* units to qualified Negroes because of their race. *Detroit Housing Commission* v. *Lewis,* 226 F.2d 180 (6th Cir. 1955).[13] Race, or a desire to enforce racial segregation, must equally be a forbidden ground for *eviction* from a government project, lest the power to discriminate be absolute.

It should be equally be made clear that a public housing authority may not bar citizens on the basis of their religion, or their ideas on public issues in violation of First Amendment guarantees. Petitioner's case arises not from a racial discrimination claim, but, rather, in the context of her assertion that she is being punished for exercising First Amendment rights of free association in a tenant's

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[13] Other such cases are *Jones* v. *City of Hamtramck,* 121 F. Supp. 123, (E.D. Mich. 1954); *Vann* v. *Toledo Metropolitan Housing Authority,* 113 F. Supp. 210 (N.D. Ohio 1953); *Banks* v. *Housing Authority of City and County of San Francisco,* 120 Cal. App.2d 1, 260 P.2d 668 (1953), *cert. denied,* 347 U.S. 974 (1954); *Taylor* v. *Leonard,* 30 N.J. Super. 116, 103 A.2d 632 (1954). See Executive Order No. 11063, 27 Fed. Reg. 11527 (1962), prohibiting racial discrimination in federally assisted housing. And see Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d, and the implementing regulations (24 C.F.R., Subtitle A, Part 1) prohibiting discrimination in federally assisted programs, including low-rent housing projects.

organization. This Court's decisions expressing concern for the procedures by which First Amendment claims are determined (cf. *Speiser* v. *Randall,* 357 U.S. 513), leave no room for an absolute power to conceal violations of the Amendment. This Court has condemned rules which condition the availability of public benefits so as to restrict First Amendment rights. In *Sherbert* v. *Verner,* 374 U.S. 398, 404, the Court said:

> It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. American Communications Asso. v. Douds, 339 U.S. 382, 390; Wieman v. Updegraff, 344 U.S. 183, 191, 192; Hannegan v. Esquire, Inc., 327 U.S. 146, 155, 156. . . . In Speiser v. Randall, 357 U.S. 513, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms.

The principle was applied in *Speiser* v. *Randall,* 357 U.S. 513, to invalidate state action limiting the availability of a tax exemption in a manner which inhibited free speech. The rule is necessary lest the State "produce a result which . . . [it] could not command directly" 357 U.S. at 526. Applying these principles, we submit that it could not be gainsaid that a public housing authority could not bar a citizen from occupancy in a project for failure to make a religious oath (cf. *Torcaso* v. *Watkins,* 367 U.S. 488), or for refusal to make an unconstitutionally vague oath (cf. *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, 288), or to punish innocent membership in a proscribed organization (cf. *Wieman* v. *Updegraff,* 344

U.S. 183, 192),[14] or to suppress freedom of association to advance political views (cf. *N.A.A.C.P.* v. *Button*, 371 U.S. 415). There is no reason whatever to suppose that the restraints of the Constitution do not apply with equal force to the manager of a federally operated or supported housing project. *Tucker* v. *Texas*, 326 U.S. 517.

Tucker v. *Texas, supra,* held that the manager of a federal housing development for defense workers unconstitutionally suppressed the distribution of religious literature by seeking to exercise a licensing power. This manager had claimed "full authority to regulate the conduct of those living in the village" (326 U.S. at 519), in support of his order that a Jehovah's Witness discontinue all religious activity in the village (*id.*). The Court rejected the claim of arbitrary power over freedom of the press and religion and reversed state criminal convictions which enforced the manager's invalid assertion of authority over the tenants' lives.

We submit that reason and authority reject the Durham Authority's claimed right to act unreasonably in terminating the benefits of the program it administers. Of course, the Authority, like other governmental agencies, may constitutionally be given a substantial degree of control over the use and occupancy of its projects, to efficiently manage and fulfill the purposes of its program. We do not stop to fully explore the detailed scope of the Authority's power to make, and to enforce by evictions, rules for the conduct of tenants needed to protect its property and other tenants, because no one would deny that

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[14] The Court said in *Wieman* (*supra,* 344 U.S. at 192):

> We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory.

the Authority must have powers to accomplish these ends. The issue here is not whether a public housing agency may evict on a reasonable ground, or whether or not a particular ground is reasonable. The issue is whether a government agency may evict for an unreasonable, arbitrary and capricious reason, recognizing that the power to be capricious includes a practical power to act for reasons specifically forbidden by the Constitution. The answer to *that* question must be negative if there is to be any protection at all for the civil rights and civil liberties of public housing tenants. *Rudder* v. *United States,* 226 F.2d 51 (D.C. Cir. 1955). Otherwise, minor bureaucrats—housing project managers—are granted "full authority to regulate the conduct of those living in the [project]." *Tucker* v. *Texas,* 326 U.S. 517, 519.

So we now turn to another vital question. What does procedural due process require to give protection against discriminatory, arbitrary, capricious and unconstitutional action terminating public housing benefits?

II.

Petitioner Was Entitled to Notice of the Reason Her Low-Income Housing Benefits Were Cancelled.

Whatever may be decided with respect to petitioner's claim (discussed in Part III below) that she had a right to a hearing before eviction, petitioner was at the very least entitled to notice of the reason, if any, for the Housing Authority's action requiring her to move from the project. Notice of the reasons for proposed governmental action adversely affecting a citizen's interests has been regarded as an essential element of due process in a variety of contexts. *Willner* v. *Committee on Character &*

Fitness, 373 U.S. 96, 105-106; *Morgan* v. *United States*, 304 U.S. 1, 18, 19; cf. *Gonzales* v. *United States*, 348 U.S. 407. If there is even to be any potential protection against arbitrary action by public housing officials, the officials must at the very least be required to formulate and articulate a reason for an eviction, and notify the tenant of that reason in writing. Notice of reasons would at least offer a possibility of relief if an official is mistaken about the facts and he or some reviewing authority can be persuaded that he is mistaken, or if the official is mistaken about the law and it can be shown that the proposed action violates the law, or if the official acts contrary to policy established by superior administrative officials. A requirement that the housing agency state its reason for terminating low income benefits serves the salutary function of requiring that the agency act responsibly and actually have a reason. It is a protection against capricious action.

The Authority has no substantial interested to be served by keeping its reason secret. Such secrecy does nothing to further the purposes of the state-federal program to provide housing assistance to the poor. We have seen no proffered justification for a policy of secrecy. If the Housing Authority has a good reason for evicting a tenant, there is no impediment to its stating that reason and relying on it as the basis for eviction. There are no considerations of immediate danger to the public or of peril to the National Security or other similar factors which might justify the Authority's reluctance to give tenants notice of the reasons for eviction. The Authority's refusal to accord its tenants reasonable protection can only help to break the spirits of the evicted tenants, and of other members of the community familiar with the injustice, and increase the apathy and despair of the impoverished. The policy of secrecy serves only as a shield for arbitrariness.

It is, of course, more convenient for a bureaucrat to have arbitrary power and to be unaccountable for his acts. But as Mr. Justice Frankfurter put it: "Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171 (concurring opinion). Indeed, it is in the "manifest interest" of government agencies to be fair, and to appear to be fair, in their dealings with citizens they are charged with assisting. Cf. *Morgan* v. *United States*, 304 U.S. 1, 22. A policy of secrecy in evictions sacrifices the deterrent value which might be gained from announced enforcement of reasonable rules and regulations, and merely promotes generalized fear and insecurity on the part of tenants.

The tenant of public low income housing has a strong interest in continued eligibility for public housing benefits and in being informed of the reason the authorities may have for cancelling such benefits. The value of the tenant's interest in public housing may be measured by the governmental findings which justify providing the benefits (42 U.S.C. §1401; Gen. Stats. of N.C. §157-2). The essence of the matter is that the tenant is provided public housing only because he would be otherwise unable to obtain decent and sanitary housing, and when the tenant is denied decent housing he is remitted to slums, including:

> . . . such unsafe or unsanitary conditions [that] arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; * * * [which] conditions cause an increase in and spread of disease and

crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values . . . " (Gen. Stats. of N.C. §157-2).

The federal and state governments have found that unless they provide Mrs. Thorpe and others in her economic position decent and sanitary housing, they will be condemned to live in slum conditions which pose a constant threat to their health, safety and morals. Thus, the interest of petitioner is no less than the interest in being able to live at a minimum level of decency and comfort. And, of course, petitioner, and society in general have an interest in her freedom to exercise her rights of free speech and free association without fear of a crushing reprisal.

The effect of being remitted to live in slum conditions can be incalculable. It is punishment in a real sense. The impact of such decisions on the children of the poor may influence the entire course of their lives. And where a Negro family is involved, as in petitioner's case, a return to the slums may quite likely mean a return to a racial ghetto. This Court described the problem in *Berman* v. *Parker*, 348 U.S. 26, 32, where Mr. Justice Douglas wrote:

> Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden.

The tenant's interest in knowing the grounds for eviction is compelling. This minimal protection against arbitrariness may at least afford a channel for relief in some cases of injustice. Knowing the ground for the official action may afford a basis for informal complaint or request for

reconsideration, for an appeal to higher executive authority, for an appeal for legislative reform or relief, or for an appeal to the courts. Minimal fairness requires that petitioner be apprised of the reason for a curtailment of benefits she is entitled to receive under a program of benefits for poor persons. Petitioner is entitled to know the claims of those who would deprive her of governmental benefits. *Morgan* v. *United States,* 304 U.S. 1. The right to know a reason for official action is vital so long as there remains any conceivable method, however informal, of influencing that action. *Gonzales* v. *United States,* 348 U.S. 407, illustrates the point. In *Gonzales, supra,* a draft registrant was held entitled to have a copy of an "advisory recommendation" made by the Department of Justice to his Selective Service Appeal Board, and to an opportunity to file a reply. Though there was no hearing before the appeal board and the statute involved was silent on the right to know the recommendations, the Court found that this right was implicit in the Act "viewed against our underlying concepts of procedural regularity and basic fair play" (348 U.S. at 412).[15]

The great value to a tenant of a rule requiring that the Housing Authority disclose its asserted justification for eviction is demonstrated by a recent case involving claims similar to petitioner's. In *Holt* v. *Richmond Redevelopment and Housing Authority,* Civil Action No. 4746, E.D. Va., September 7, 1966, a tenant sued under 42 U.S.C. §1983 to restrain his eviction from a public housing project on the ground that the authority's purpose was to punish him for his tenant-organizing activities. The housing authority answered by asserting that the reason for eviction

[15] Cf. *Simmons* v. *United States,* 348 U.S. 397, finding a deprivation of the fair hearing required by the selective service law in the failure to furnish a fair resume of an adverse FBI report considered by the hearing officer.

was the plaintiff's failure to report all of his income in violation of a lease provision, and not his organizing activities. The plaintiff then proved the circumstances concerning his income and his organization's disputes with the authority. The Federal District Court (Butzner, *J.*) found the authority's asserted reason for eviction unfounded, and that the actual reason was plaintiff's constitutionally protected activity, and restrained the eviction. *Holt, supra,* clearly shows the vice of the rule (applied in this case) that the reason for eviction is "immaterial."

In the Brief in Opposition to the petition for certiorari respondent suggests that petitioner could have learned the "motives, if any, for the eviction," in the course of the summary ejectment proceedings, by cross-examination of the housing director either during trial or by pre-trial discovery. (Brief in Opposition, pp. 7-8). But the courts below never rested on this ground. They took the view that the Housing Authority had no duty to communicate a reason (R. 23), and that the reason was "immaterial" in a determination of the Authority's right of possession (R. 28). The case was tried as a test of the Authority's right to act without a reason, as clearly indicated by the stipulation that the Housing Director would testify, as he had before the Justice of the Peace that "whatever reason there may have been, *if any,* for giving notice . . . it was not for the reason" of petitioner's organizing activities. (Emphasis supplied). There was no suggestion that the Authority had any reason which it was prepared to divulge and rely on. Finally, petitioner urges that disclosure in court would not in any event cure the failure to give a reason at the time her benefits were cancelled. An important ground for requiring that the Authority state a reason is to insure that the Authority will actually

formulate a reason and act responsibly in cutting off governmental benefits. This objective is not accomplished by disclosure of a reason for the first time in court, when the reason may be merely a *post facto* attempt to justify that which was done for no good reason. Low-income housing officials deal with tenants who are impoverished, and are often ignorant of their rights. The tenants will not often know whether to resist an order to move unless they know the grounds of the agency's action. They will rarely have lawyers or the resources to go to court to find out why they are being evicted. They should at least be told why they are being subjected to eviction—a punishment that is real and severe.

The courts below decided that petitioner had no right to be informed of the grounds for eviction by relying on the provisions of the lease. This was, in effect, a ruling that petitioner had waived the claimed constitutional right to notice of the reason for eviction. Conceding, *arguendo*, that the lease permits eviction arbitrarily and unconstitutionally, we urge that the government may not validly exact such an unconstitutional condition as the price of obtaining low-income public housing benefits. The state-federal agency may not exact surrender of the right to be treated fairly and reasonably as the price of the opportunity to obtain decent quarters under a government program for the poor. In *Sherbert* v. *Verner*, 374 U.S. 398, 404, this Court held that a state could not condition the granting of unemployment benefits on the surrender of First Amendment rights to the free exercise of religion. The rule against unconstitutional conditions protected free speech in *Speiser* v. *Randall*, 357 U.S. 513. The rule proscribing the imposition of unconstitutional conditions has also been applied in cases that involved: use of public highways, *Frost Trucking Company* v. *Railroad Commission*, 271 U.S. 583; foreign

corporations doing business in a state, *Hanover Fire Ins. Co.* v. *Harding*, 272 U.S. 494; *Wheeling Steel Corp.* v. *Glander*, 337 U.S. 562; and public employment, see, *Torcaso* v. *Watkins*, 367 U.S. 488; *Shelton* v. *Tucker*, 364 U.S. 479; *United Public Workers* v. *Mitchell*, 330 U.S. 75, 100. See also, *Slochower* v. *Board of Education*, 350 U.S. 551, 555; *Wieman* v. *Updegraff*, 344 U.S. 183, 191. And see, O'Neil, *Unconstitutional Conditions: Welfare Benefits with Strings Attached*, 54 Calif. L. Rev. 443 (1966).

As the United States Court of Appeals for the Fifth Circuit said in *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), upholding the right of students to a hearing before expulsion from a public college for alleged misconduct: "the right to notice and a hearing is so fundamental to the conduct of our society that the waiver must be clear and explicit" 294 F.2d at 157. Cf. *Johnson* v. *Zerbst*, 304 U.S. 458. The alleged waiver of notice of the reasons for eviction in Mrs. Thorpe's lease, is by no means "clear and explicit." There is nothing in the lease which expressly grants the right to evict without stating a reason. Indeed, we submit that—far from supporting a finding of waiver—ordinary principles of interpretation support a holding that this lease does require that a ground for eviction be stated in writing. This follows from any effort to read the variety of provisions allowing the management to terminate so that they are mutually consistent.

The lease states that it "shall be automatically renewed for successive terms of one month each" at a rental of $29, provided, "there is no change in the income or composition of the family of the tenant and no violation of the terms hereof" (R. 12). The lease has four provisions for termination by management: one allows termination on 30 days notice; another requires only 15 days notice;

another provides termination "automatically at the option of the management" without notice; and, another requires the tenant to vacate "promptly." [16] Unless the lease requires written notice of the reason for eviction, the tenant cannot know how much notice he is entitled to receive. The lease clearly does not contemplate, for example, that a tenant be evicted on no notice, or on only fifteen days notice, if the manager's reason is that the tenant's income makes him ineligible. And, similarly, it does not contemplate eviction on fifteen days notice, or at all, if the manager believes that the tenant's income makes him ineligible when the actual facts are otherwise. Merely to insure that the tenant gets what he "bargains" for (if we may use that inapplicable word in this context), the lease may be, and

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[16] 1. Management "may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last day of the term" (R. 12).

2. If management determines that a tenant's income exceeds the limits for eligible occupancy it "may terminate at the end of any calendar month by giving the Tenant not less than 30 days' prior notice in writing" (R. 15).

3. If a tenant is a member of an organization designated as subversive by the Attorney General of the United States he must vacate the premises "promptly" (R. 17).

4. If a tenant makes misrepresentations in his application or if he "fails to comply with any of the provisions of" the lease, it is "automatically terminated at the option of the management" and the tenant "waives all notice required by law" and management may "immediately re-enter said premises and dispossess the Tenant without legal notice or the institution of any legal proceedings whatsoever" (R. 16).

The host of provisions the tenant must comply with include, *inter alia*, duties: to pay rent when due; to pay for damages and excess consumption of gas, water and electricity; to use the premises only for a dwelling; to keep the premises clean; not to keep dogs; to follow rules and regulations; to submit an annual income statement; and to promptly notify management of any increase or decrease in family income or any change in family composition or assets (R. 13-14). There are numerous other such provisions (*ibid.*).

should be, read to require that management state a reason for a purported termination of the lease.[17]

In any event, the lease contains no clear waiver of the right to notice of the reasons for eviction. It should not lightly be presumed, from a document that is silent on the subject, that the constitutional rights of indigent public housing tenants have been waived. This is particularly true, considering the fact that the leases are prepared by government agencies who stand in an infinitely superior "bargaining position." Indeed, by definition, indigent public housing tenants have no "bargaining position" at all. They are offered public housing only because they have insufficient

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[17] This Court may independently construe the lease in accordance with federal law. *Clearfield Trust Co.* v. *United States,* 318 U.S. 363; *United States* v. *Allegheny County,* 322 U.S. 174. The lease was entered into by the Housing Authority acting to carry out the policy of the federal housing laws, under a contract with the federal government and with federal funds. The lease in question is a contract with an intended beneficiary of the federal program. This was not a custom-tailored lease negotiated with specific reference to North Carolina law. Contrast: *United States* v. *Yazell,* 382 U.S. 341; and see *United States* v. *Helz,* 314 F.2d 301 (6th Cir. 1963). Such month to month leases are commonly used by almost every public housing agency in the country, though no federal law requires such short terms. There is, thus, a substantial federal interest in national uniformity in the treatment of the intended beneficiaries of the federal program in accordance with basic standards of decency and procedural fairness. This is not at all inconsistent with the policy of the federal act to vest in local agencies the "maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the [Federal] Authority), *with due consideration to accomplishing the objectives* of this chapter while effecting economies" (42 U.S.C. § 1401; emphasis supplied). The policy assumes a reservoir of federal control to accomplish the objective of the Act, e.g., furnishing housing to the needy. Interpretation of the lease as a federal instrument under the *Clearfield Trust* doctrine, would not require that federal rather than state law govern contracts made by local authorities with others. Contracts with beneficiaries of the program are plainly distinguishable from contracts between the local agencies and builders or suppliers, which ought to be governed by state law, consistent with the policy of using local law as a convenient local resource to accomplish the objectives of the program.

funds to obtain decent housing on the private market. It blinks reality to treat low-income public housing tenants as if they bargain with the government over the terms of their leases.

III.

Petitioner Was Entitled to an Administrative Hearing to Contest the Cancellation of Her Low-Income Housing Benefits.

Due process requires that petitioner be given some opportunity to be heard to offer proof to contest the Authority's action cancelling her low-income housing benefits. The right to a hearing has long been regarded as one of the fundamental rudiments of fair procedure necessary where the government acts against a citizen's vital interests. Hearings are an important protection against arbitrariness. They are customary in our law where the decision about how government will treat the citizen turns on issues of fact. The expectable ordinary controversies that may lead to public housing evictions need fair procedures for fact-finding. They might involve various claims of misbehavior by tenants affecting other tenants or the property. Tenants should have the right to have decisions on such issues based on evidence and not on rumor or fancy. For the indigent, eviction is a serious penalty. And, of course, hearings are all the more necessary where First Amendment claims are implicated, or there is a claim of race discrimination, or any similar constitutional claim.

The due process right to a fair administrative hearing has been sustained in a variety of contexts over the years.[18]

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[18] The right to a hearing in criminal and civil litigation in the courts is, of course, basic in our Constitutional jurisprudence. *Re Oliver*, 333 U.S. 257, 273; *Coe* v. *Armour Fertilizer Works*, 237 U.S. 413.

The right to a hearing has been upheld where officials sought to deport aliens, *Japanese Immigrant Case* (*Yamataya* v. *Fisher*), 189 U.S. 86; *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 49-51; *Kwong Hai Chew* v. *Colding*, 344 U.S. 590; where a man claiming citizenship was excluded from the country, *Chin Yow* v. *United States*, 208 U.S. 8; where a board assessed taxes for street-paving, *Londoner* v. *Denver*, 210 U.S. 373, 386;[19] where a railroad was ordered to abolish a grade crossing, *Southern R. Co.* v. *Virginia*, 290 U.S. 190; where railway rates, *I.C.C.* v. *Louisville & N. R. Co.*, 227 U.S. 88, 91, 93, and livestock prices, *Morgan* v. *United States*, 304 U.S. 1,[20] were regulated; where a college professor was summarily discharged without a hearing for invoking the privilege against self-incrimination before a Senate committee, *Slochower* v. *Board of Higher Education*, 350 U.S. 551; where students in state colleges were expelled without hearings for alleged misconduct in anti-segregation demonstrations, *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930; *Knight* v. *State Board of Education*, 200 F.Supp. 174 (M.D. Tenn. 1961);[21] and where a bar committee refused, without a hearing, to certify an applicant's good character, *Willner* v. *Committee on Character & Fitness*, 373 U.S. 96. In *Greene* v. *McElroy*, 360 U.S. 474, the Court invalidated revocation of the security clearance of

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[19] Contrast *Londoner, supra*, with *Bi-Metallic Inv. Co.* v. *State Board of Equalization*, 239 U.S. 441. The difference in results follows from application of the distinction between cases involving "adjudicative" facts and those involving "legislative" facts. 1 DAVIS, ADMINISTRATIVE LAW TREATISE, §7.04 (1958). The issues in eviction cases will almost invariably involve "adjudicative" facts determining whether tenants fall within an established rule.

[20] Cf. *Morgan* v. *United States*, 298 U.S. 468.

[21] See also *Woods* v. *Wright*, 334 F.2d 369 (5th Cir. 1964). Compare *Swan* v. *Board of Higher Education*, 319 F.2d 56, 58 (2d Cir. 1963), with *Steier* v. *New York State Educ. Com'r*, 271 F.2d 13 (2d Cir. 1959), *cert. denied*, 361 U.S. 966.

the private employee of a defense contractor, based on undisclosed adverse reports about the employee. Where the action without a fair hearing was not explicitly authorized by the President or Congress, the Court ruled it impermissible without deciding the constitutional issue. But the opinion has constitutional overtones: "Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process." 360 U.S. at 507.

When the poor deal with government welfare agencies they should receive no less protection than is accorded to meat packers, and railroads, and lawyers, and college students in their confrontations with government. As Professor Harry Jones has put it, this is "the task of the rule of law."[22] Addressing the issue, Professor Charles A. Reich has written, concerning public housing, and welfare programs generally:

> In a society where a significant portion of the population is dependent on social welfare, decisions about eligibility for benefits are among the most important that a government can make. By one set of values the granting of a license to broadcast over a television channel, or to build a hydroelectric project on a river, might seem of more far-reaching significance. But in a society that considers the individual as its basic unit

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[22] Jones, *The Rule of Law and the Welfare State*, 58 Colum. L. Rev. 143, 156 (1958):

> "In the welfare state, the private citizen is forever encountering public officials of many kinds: regulators, dispensers of social services, managers of state-operated enterprises. It is the task of the rule of law to see to it that these multiplied and diverse encounters are as fair, as just, and as free from arbitrariness as are the familiar encounters of the right-asserting private citizen with the judicial officers of the traditional law."

> a decision affecting the life of a person or a family should not be taken by means that would be unfair for a television station or power company. Indeed, full adjudicatory procedures are far more appropriate in welfare cases than in most of the areas of administrative procedure.
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> At a minimum, there should be notice to beneficiaries of regulations and proposed adverse action, and fact finding should be carried on in a scrupulous fashion.
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> Procedures can develop gradually and pragmatically, but as welfare grows in importance in our society, it will be necessary to give increasing attention to the procedures by which welfare rights are granted or refused. Here the experience of lawyers can be of great assistance; whatever the outcome of particular decisions, adequate procedure gives a sense of fairness that is vital to community acceptance of a welfare program.[23]

In a concurring opinion, expressing the view that the designation of organizations as Communist without a hearing violated procedural due process, Mr. Justice Frankfurter stated the matters he thought properly considered in judging the right to a hearing; *Joint Anti-Fascist Refugee Com.* v. *McGrath*, 341 U.S. 123, 163:

> The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedures that were followed, the protection im-

[23] Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245, 1253 (1965).

plicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment.

Appraising the circumstances of Mrs. Thorpe's case against the tests mentioned by Mr. Justice Frankfurter, persuasively demonstrates her right to a hearing as a matter of fundamental fairness:

1. *"The precise nature of the interest that has been adversely affected."* Petitioner's interest (discussed *supra*, pp. 25-26) involves the difference between living in a low-cost, decent, sanitary and stable environment or being relegated to slums that "may indeed make living an almost insufferable burden." *Berman* v. *Parker*, 348 U.S. 26, 32. It has been said that deportation may result in the loss "of all that makes life worth living", *Ng Fung Ho* v. *White*, 259 U.S. 276, 284. Can any less be said about loss of the opportunity to raise one's children in a decent environment? As President Johnson has said, the dispossessed Negro poor "are another nation." [24]

2. *"[T]he manner in which this was done, the reason for doing it."* The eviction notice stated no reason for the action, and no reason was otherwise disclosed despite petitioner's repeated requests. This is sufficient commentary on the arbitrary manner in which she was treated.

3. *"[T]he available alternatives to the procedure that was followed."* The housing authority could have afforded

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[24] Remarks of President Lyndon B. Johnson, at Howard University, Washington, D. C., June 4, 1965, "To Fulfill These Rights", p. 4:

> "But for the great majority of Negro Americans—the poor, the unemployed, the uprooted and the dispossessed—there is a much grimmer story. They still are another nation. Despite the court orders and the laws, despite the legislative victories and the speeches, for them the walls are rising and the gulf is widening."

Mrs. Thorpe a written statement of the grounds for cancelling her lease, and an opportunity to present proof on any issues of contested fact affecting her right to remain in the housing project. The Housing Authority of the City of Durham, has statutory power "to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information." Gen. Stats. of N.C., §157-9. The authority can "issue subpoenas requiring the attendance of witnesses or the production of books and papers and . . . issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance" *Ibid.* The authority is empowered to delegate its powers to conduct investigations or examinations, and to administer oaths and issue subpoenas, to committees, to counsel, and to officers or employees. *Ibid.* The authority has made no effort to show that a full trial type hearing to resolve factual disputes determinative of a tenant's right to remain in a project would be burdensome or impractical. Surely some traditional safeguards are needed lest tenants be deprived of their low income housing benefits on the basis of vicious and unfounded rumors about their personal lives or for any of a variety of invidious reasons. Petitioner's First Amendment claim should have been decided only after rigorous procedural safeguards to insure fair and reliable fact-finding.

4. "*[T]he protection implicit in the office of the functionary whose conduct is challenged.*" Housing authority managers and supervisory officials ordinarily have no training in constitutional law, are not directly responsive to an electorate, and are unlikely to be morally or intellectually superior to any other class of government ad-

ministrators. They have no special distinction which makes them the safe repositories of arbitrary power.

5. ["*T*]*he balance of hurt complained of and good accomplished.*" The injury threatened to Mrs. Thorpe has been discussed above. The Housing Authority's secrecy about its reasons for evicting her deprives the Court of any opportunity to appraise what good, if any, might be accomplished by evicting her. Denial of a hearing can plainly hide evil, but we are unable to perceive any useful public purpose that it might accomplish.

The courts below rejected the claimed right to a hearing, as they rejected the claimed right to notice, on the basis of the lease provisions. We have argued, above pp. 29-33, with respect to the right to notice, that it is unconstitutional for the agency to exact the waiver of a basic element of procedural fairness as part of the price of obtaining a low-income apartment. What we have said before, *supra*, pp. 29-33, applies with equal force to the right to a hearing. The petitioner's lease contains no clear and explicit waiver of a hearing. The Congress has not authorized local agencies to deny procedural fairness to these recipients of the national largesse. "Such [a decision] cannot be assumed by acquiescence or non-action." *Greene* v. *McElroy*, 360 U.S. 474, 507. A requirement that low-income tenants waive their rights to a hearing is an unconstitutional condition which the state-federal agency may not impose. *Sherbert* v. *Verner*, 374 U.S. 398.[25] As we have seen, arbitrary power in the hands of housing managers can strike at the heart of free speech (*Holt* v. *Richmond Redevelopment and Housing Authority*, Civil Action No. 4746, E.D. Va., September 7, 1966), and free religious expres-

[25] See also cases cited, *supra*, p. 29.

sion (*Tucker* v. *Texas*, 326 U.S. 517.) The Housing Authority of the City of Durham may not acquire arbitrary power over basic constitutional freedoms by contract, lease or otherwise. *Sherbert* v. *Verner, supra; Speiser* v. *Randall*, 357 U.S. 513.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

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APPENDIX

Excerpts from the United States Housing Act of 1937

42 U.S.C. §1401 et seq.

§ 1401. Declaration of policy

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies. Sept. 1, 1937, c. 896, § 1, 50 Stat. 888; July 15, 1949, c. 338, Title III, § 307(a), 63 Stat. 429; Sept. 23, 1959, Pub.L. 86–372, Title V, § 501, 73 Stat. 679.

§ 1402. Definitions

When used in this chapter—

LOW-RENT HOUSING; ELIGIBILITY; CONTINUED OCCUPANCY

(1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of fam-

ilies of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing shall be available solely for families of low income. Except as otherwise provided in section 1421b of this title, income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Administration after taking into consideration (A) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and (B) the economic factors which affect the financial stability and solvency of the project.

(2) The term "families of low income" means families (including elderly and displaced families) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term "families" includes families consisting of a single person in the case of elderly families and displaced families, and includes the remaining member of a tenant family. The term "elderly families" means families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under title II of the Social Security Act, or are under a disability as defined in section 423 of this Title, or are handicapped within the meaning of section 1701q of Title 12. The term "displaced families" means families displaced by urban renewal or other governmental action, or families whose present or former dwellings are situated in areas determined by the Small Business Administration, subsequent to April 1,

1965, to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster. As amended Aug. 10, 1965, Pub.L. 89–117, Title I, §§103(b), 104, 79 Stat. 457.

SLUM

(3) The term "slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

SLUM CLEARANCE

(4) The term "slum clearance" means the demolition and removal of buildings from any slum area.

DEVELOPMENT; OFFICE SPACE FOR RENEWAL FUNCTIONS

(5) The term "development" means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-rent housing project. The term "development cost" shall comprise the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges, but not beyond the point of physical completion), and in otherwise carrying out the development of such project. Construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling, or repair of existing buildings. In cases where the public housing agency is also the local public agency for the purposes of sections 1450–1452, 1453–1455, 1456–1460, and 1462 of this title, or in cases where the public housing agency and the local

public agency for purposes of such sections operate under a combined central administrative office staff, an administration building included in a low-rent housing project to provide central administrative office facilities may also include sufficient facilities for the administration of the functions of such local public agency, and in such case, the Administration shall require that an economic rent shall be charged for the facilities in such building which are used for the administration of the functions of such local public agency and shall be paid from funds derived from sources other than the low-rent housing projects of such public housing agency.

ADMINISTRATION

(6) The term "administration" means any or all undertakings necessary for management, operation, maintenance, or financing, in connection with a low-rent-housing or slum-clearance project, subsequent to physical completion.

FEDERAL PROJECT

(7) The term "Federal project" means any project owned or administered by the Administration.

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PUBLIC HOUSING AGENCY

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Administration), which is authorized to engage in the development or administration of low-rent housing or slum clearance. The Administration shall enter into contracts for financial assistance with a State or State agency where such State or State agency

makes application for such assistance for an eligible project which, under the applicable laws of the State, is to be developed and administered by such State or State agency.

STATE

(12) The term "State" includes the States of the Union, the District of Columbia, and the Territories, dependencies, and possessions of the United States.

PUBLIC HOUSING ADMINISTRATION

(13) The term "Administration" means the Public Housing Administration.

* * * * *

§ 1404a. Public Housing Administration; right to sue; employment of personnel; delegation of functions; rules and regulations; expenses

The Public Housing Administration shall sue and be sued only with respect to its functions under this chapter, and sections 1501–1505 of this title. The Public Housing Commissioner may appoint such officers and employees as he may find necessary, which appointments, notwithstanding the provisions of any other law, after August 10, 1948, shall be made under this section, and shall be subject to the civil-service laws and the Classification Act of 1949, as amended; delegate any of his functions and powers to such officers, agents, or employees of the Public Housing Administration as he may designate; and make such rules and regulations as he may find necessary to carry out his functions, powers, and duties. Funds made available for carrying out the functions, powers, and duties of the Administration (including appropriations therefor, which are authorized) shall be available, in such amounts as may

from year to year be authorized by the Congress, for the administrative expenses of the Administration. Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, the Public Housing Administration, or any State or local public agency administering a low-rent housing project assisted pursuant to this chapter or sections 1501–1505 of this title, shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility with respect to low-rent housing projects assisted pursuant to this chapter and sections 1501–1505 of this title, the Public Housing Administration is authorized, where it finds such action equitable and in the public interest, to exclude amounts or portions thereof paid by the United States Government for disability or death occurring in connection with military service. Aug. 10, 1948, c. 832, Title V, § 502(b), 62 Stat. 1284; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

§ 1410. Annual contributions in assistance of low rentals—Authorization

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MAXIMUM INCOME LIMITS; ADMISSION POLICIES

(g) Every contract for annual contributions for any low-rent housing project shall provide that—

(1) the maximum income limits fixed by the public housing agency shall be subject to the prior approval of the Administration and the Administration may require the agency to review and revise such limits if the Administra-

tion determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the chapter;

(2) the public housing agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of displaced families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income: *Provided,* That in establishing such admission policies the public housing agency shall accord to families of low income such priority over single persons as it determines to be necessary to avoid undue hardship; and

(3) the public housing agency shall determine, and so certify to the Administration, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and the public housing agency shall make periodic reexaminations of the incomes of families living in the project and shall require any family whose income has increased beyond the approved maximum income limits for continued occupancy to move from the project unless the public housing agency determines that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so, in which event such family may be permitted to remain for the duration of such a situation if it pays an increased rent consistent with such family's increased income.

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Excerpts from the United States Housing Act of 1937

§ 1415. Preservation of low rents

In order to insure that the low-rent character of housing projects will be preserved, and that the other purposes of this chapter will be achieved, it is provided that—

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LOCAL RESPONSIBILITIES AND DETERMINATIONS

(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise—

(a) The Administration shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-rent housing projects initiated after March 1, 1949, (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a need for such low-rent housing which is not being met by private enterprise; and

(b) The Administration shall not make any contract for loans (other than preliminary loans) or for annual contributions pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, (i) unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Administration pursuant to this chapter; (ii) unless the public housing agency has demon-

strated to the satisfaction of the Administration that a gap of at least 20 per centum (except in the case of a displaced family or an elderly family) has been left between the upper rental limits for admission to the proposed low-rent housing and the lowest rents at which private enterprise unaided by public subsidy is providing (through new construction and available existing structures) a substantial supply of decent, safe, and sanitary housing toward meeting the need of an adequate volume thereof; and (iii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a feasible method for the temporary relocation of the individuals and families displaced from the project site, and that there are or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of such individuals and families, decent, safe, and sanitary dwellings equal in number to the number of and available to such individuals and families and reasonably accessible to their places of employment.

Excerpts from the North Carolina "Housing Authorities Law"

Gen. Stats. of North Carolina, § 157-1 et seq.

§ 157-2. Finding and declaration of necessity

It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative deter-

mination to be in the public interest. (1935, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

§ 157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation

Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said sur-

rounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the

date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;

(3) The term of office of each of the commissioners;

(4) The name which is proposed for the corporation; and

(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

Excerpts from the North Carolina "Housing Authority Law"

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority. (1935, c. 456, s. 4; 1943, c. 636, s. 7; 1961, c. 987.)

§ 157-9. Powers of authority

An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

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To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality

of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its

revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist

which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a

project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. (1935, c. 456, s. 9; 1939, c. 150.)

§ 157-23. Contracts with federal government

In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this article to undertake. (1935, c. 456, s. 23.)

§ 157-29. Rentals and tenant selection

It is hereby declared to be the policy of this State that each housing authority shall manage and operate its hous-

ing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

(1) To pay, as the same become due, the principal and interest on the bonds of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and

(3) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve.

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which necessary (as determined by the

housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;

(2) It may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons;

(3) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(4) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependdents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

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Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section. (1939, c. 150.)

North Carolina Statutes Re Summary Ejectment

Gen. Stats. of North Carolina, § 42-26 et seq.

§ 42-26. Tenant holding over may be dispossessed in certain cases

Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

(1) When a tenant in possession of real estate holds over after his term has expired.

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated. (4 Geo. II, c. 28; 1868-9, c. 156, s. 19; Code, ss. 1766, 1777; 1905, cc. 297, 299, 820; Rev., s. 2001; C. S., s. 2365.)

§ 42-28. Summons issued by justice on verified complaint

When the lessor or his assigns, or his or their agent or attorney, makes oath in writing, before any justice of the

peace of the county in which the demised premises are situated, stating such facts as constitute one of the cases described in § 42-26 and §42-27, and describing the premises and asking to be put in possession thereof, the justice shall issue a summons reciting the substance of the oath, and requiring the defendant to appear before him or some other justice of the county, at a certain place and time (not to exceed five days from the issuing of the summons, without the consent of the plaintiff or his agent or attorney), to answer the complaint. The plaintiff or his agent or attorney may in his oath claim rent in arrear, and damage for the occupation of the premises since the cessation of the estate of the lessee: Provided, the sum claimed shall not exceed two hundred dollars; but if he omits to make such claim, he shall not be thereby prejudiced in any other action for their recovery. (1868-9, c. 156, s. 20; 1869-70, c. 212; Code, s. 1767; Rev., s. 2002; C. S., s. 2367.)

§ 42-29. Service of summons

The officer receiving such summons shall immediately serve it by the delivery of a copy to the defendant or by leaving a copy at his usual or last place of residence, with some adult person, if any such be found there; or, if the defendant has no usual place of residence in the county and cannot be found therein, by fixing a copy on some conspicuous part of the premises claimed. (1868-9, c. 156, s. 21; Code, s. 1768; Rev., s. 2003; C. S., s. 2368.)

§ 42-30. Judgment by default or confession

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if the defendant fails to appear, or admits the allegations of the complaint, the justice shall give judgment that the defendant be removed from, and the plaintiff be put

in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding two hundred dollars, be claimed in the oath of the plaintiff as due and unpaid, the justice shall inquire thereof, and give judgment as he may find the fact to be. (1868-9, c. 156, s. 22; Code, s. 1769; Rev., s. 2004; C. S., s. 2369.)

§ 42-31. Trial by justice; jury trial; judgment; execution

If the defendant by his answer denies any material allegation in the oath of the plaintiff, the justice shall hear the evidence and give judgment as he shall find the facts to be. If either party demands a trial by jury, it shall be granted under the rules prescribed by law for other trials by jury before a justice; and if the jury finds that the allegation in the plaintiff's oath, which entitles him to be put in possession, is true, the justice shall give judgment that the defendant be removed from and the plaintiff put in possession of the demised premises, and also for such rent and damages as shall have been assessed by the jury, and for costs; and shall issue his execution to carry the judgment into effect. (1868-9, c. 156, s. 23; Code, s. 1770; Rev., s. 2005; C. S., s. 2370.)

§ 42-32. Damages assessed to trial

On appeal to the superior court, the jury trying issues joined shall assess the damages of the plaintiff for the detention of his possession to the time of the trial in that court; and, if the jury finds that the detention was wrongful and that the appeal was without merit and taken for the purpose of delay, the plaintiff, in addition to any other damages allowed, shall be entitled to double the amount of rent in arrears, or which may have accrued, to the time

of trial in the superior court. Judgment for the rent in arrears and for the damages assessed may, on motion, be rendered against the sureties to the appeal. (1868-9, c. 156, s. 28; Code, s. 1775; Rev., s. 2006; C. S., s. 2371; 1945, c. 796.)

§ 42-34. Undertaking on appeal; when to be increased

Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; upon appeal to the superior court either plaintiff or defendant may demand that the same shall be tried at the first term of said court after said appeal is docketed in said court, and said trial shall have precedence in the trial of all other cases, except in cases of exceptions to homesteads: Provided, that said appeal shall have been docketed at least ten days prior to the convening of said court: Provided further, that in the event the trial before the justice of the peace takes place at least fifteen days prior to the convening of said superior court, said appeal shall, upon the demand of either plaintiff or defendant, be docketed in time to be tried at said first term of said superior court after said trial before the justice of the peace: Provided, further, that the presiding judge, in his discretion, may make up for trial in advance any pending case in which the rights of the parties or the public require it; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages

for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed. (1868-9, c. 156, s. 25; 1883, c. 316; Code, s. 1772; Rev., s. 2008; C. S., s. 2373; 1921, c. 90; Ex. Sess. 1921, c. 17; 1933, c. 154; 1937, c. 294; 1949, c. 1159.)